Keller Aluminum Chairs Southern, Inc., and Keller Aluminum Ladders Southern, Inc., Subsidiaries of Keller Industries, Inc. ***and*** **United Steelworkers of America, AFL–CIO.** Cases 23–CA–2425 and 23–CA–2526

JUNE 12, 1968

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On June 22, 1967, the National Labor Relations Board issued a Decision and Order in the above-entitled case,[1] finding, *inter alia*, that the Respondent had discriminatorily discharged Dellaphene Marek, Laura Engleman, Charles Carter, Henry F. Charanza, and Jo Ann Gilliam in violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, and directing that the Respondent make whole the above-named employees for any loss of earnings resulting from the discrimination.

On October 13, 1967, the Regional Director for Region 23 issued a backpay specification and notice of hearing. Upon appropriate notice issued by the Regional Director, a hearing was held on December 6, 7, and 8, 1967, before Trial Examiner Sidney J. Barban for determination of the amounts of backpay due the claimants.

On March 13, 1968, the Trial Examiner issued his attached Decision in backpay proceeding, in which he found that the claimants were entitled to the amounts of backpay therein set forth. Thereafter, the Respondents filed exceptions to the Trial Examiner's Decision in backpay proceeding.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision in backpay proceeding, the exceptions, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

On the basis of the Trial Examiner's Decision in backpay proceeding and the entire record in this case, the National Labor Relations Board hereby orders that the Respondents, Keller Aluminum Chairs Southern, Inc., and Keller Aluminum Ladders Southern, Inc., Subsidiaries of Keller Industries, Inc., Caldwell, Texas, their officers, agents, successors, and assigns, shall pay to the employees involved in this proceeding as net backpay the amount determined to be due by the Trial Examiner in his attached Decision in backpay proceeding.

TRIAL EXAMINER'S DECISION IN BACKPAY PROCEEDING

STATEMENT OF THE CASE

SIDNEY J. BARBAN, Trial Examiner: This matter was heard at Bryan, Texas, on December 6, 7, and 8, 1967, upon a backpay specification dated Octover 13, 1967, as amended at the hearing, issued pursuant to an order of the National Labor Relations Board directing the above-named Respondents to take certain affirmative action to effectuate the purposes of the Act. See 165 NLRB 1011. Since the close of the hearing, the General Counsel has requested permission to withdraw those parts of the specification relating to the obligation of Respondents to reimburse certain employees for dues deducted from their pay, inasmuch as Respondents have paid the sums claimed. Respondents agree. The General Counsel's motion in this respect is granted.

The General Counsel contends that backpay is due Charles Carter, Dellaphene Marek, Henry Charanza, Jo Ann Gilliam, and Laura Engleman, and that Engleman should also be reimbursed for loss of benefits incurred by reason of the hospitalization of her son during the backpay period. There is no dispute with respect to the backpay periods or the gross amounts alleged in the specification, as amended. The only issues remaining concern the adequacy of the efforts of the five employees involved in seeking employment during the backpay period (and if inadequate, the amounts that should be deducted from gross backpay as a result), and the amount due Engleman for loss of hospitalization benefits.

Upon the entire record in this case, from observation of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Respondents, the Trial Examiner makes the following:

FINDINGS AND CONCLUSIONS

A. *The Facts*

The relevant and material facts with respect to the backpay claims of each of the employees are as follows:

Laura Engleman: Engleman's backpay period extends from June 23, 1966, to April 3, 1967. It is

[1] 165 NLRB 1011

conceded that the gross amount of backpay involved in her case is $1,808, and that she would have received a gross amount of $215 in hospitalization benefits during this period if she had not been terminated by Respondents. Engleman had no interim earnings during this period.

Engleman testified that she registered with the nearest Texas Employment Commission office (hereinafter referred to as TEC), located in Bryan, Texas, about 25 miles from Caldwell, but this office did not refer her to any jobs.[1] The evidence shows that a large number of people were out of work and looking for jobs during part of this period. Thus, Respondents' chair plant was shut down from June 1966 to October of that year, placing in excess of 200 persons (Respondents' brief states 300) on the job market, while during approximately the same period, but extending into December 1966, there were also 30 to 35 employees of Respondents' ladder plant laid off. It would also appear that about June 1966, Respondents, in accordance with their normal practice discontinued the night shift at their chair plant, consisting of approximately 40 to 50 persons, until about April 1967. There is some question as to whether, or how many of, this night shift would have entered the normal labor market in the area. Other than Respondents' plants there is only one manufacturing plant in Caldwell, a community of about 2204 population. (1960 census.)

Engleman applied for work at the International Furniture plant and at Albritton Engineering Company in Bryan, both apparently in early October 1966. She filed written applications at both plants, and in each case was told that they were not hiring, but that they would let her know if there was work available for her. She did not thereafter hear from either employer. Both Engleman and Dellaphene Marek, who accompanied her on this occasion, noted that the interviewer at Albritton evidenced interest in their union buttons, and Engleman testified that he asked the women if they had been fired because of the buttons.

Engleman testified that in July or August she sought work with Clint Luksa, a local wholesale distributor of gas and oil and was advised that he did not need any help. She also asked for a job wrapping meat at a locker plant, but was told that there were no jobs available. Upon seeking work as a janitress at the post office, Engleman was told that they were only hiring veterans. Engleman stated that she also talked to others with whom she came into contact about jobs they knew. She testified that she did not reject any job offer.

Respondents contend, in their brief, that Engleman should have sought work at the local hospital as a nurses' aide since this was the job which she had before she was employed by Respondents, or should have sought work in a local grocery store since she had experience working in her brother's store, or should have applied for certain jobs advertised in the local newspaper for waitresses at local cafes and cooks and bakers at Texas A & M College (located approximately 25–30 miles away). Respondent also notes that during this period, Engleman was available to assist her husband on their farm.

Engleman was questioned about these matters. With respect to the nurses' aide position at the hospital, Engleman testified that after leaving her work at the hospital, she developed a nauseous condition when exposed to human waste, which her doctor advised her sometimes occurs with changes in the body, and for that reason she did not consider going back to the hospital, where she would be exposed to conditions which would make her nauseous. The rate of pay for a nurses' aide was shown to be substantially less than that she had been receiving in Respondents' employ. However, if she had been employed there she would have received a 20-percent reduction on her hospital expenses.

She further testified that she did not apply for work at International Shoe in Bryan because her sister-in-law told her that she had applied for work there and had been informed that they were not hiring women.[2] She stated that she had no experience as a waitress, did not "know how to work the machines" used by the cashiers in the grocery stores, which, she said, did not appear to her to need additional help, and further stated that she had been informed that the Texas A & M ad for cooks and bakers was for men. Engleman stated that while she was unemployed, she "piddled" around the farm, but her help was not needed. Engleman returned to work for Respondents when recalled.

In their brief (p. 23), Respondents state that Engleman "should be denied the amount she would have earned as a day laborer on the farm, See *Brown & Root*, 48 LRRM 1391 [132 NLRB 486], together with a deduction for her failure to seek work at the hospital." Respondents state that Engleman's backpay award should be $904. It is also contended that the claim for hospitalization benefits should be reduced by 20 percent, since this would have been granted by the hospital if she were working there at the time.

Dellaphene Marek: Marek's backpay period and gross backpay claim are the same as Engleman's. Marek also had no interim earnings during the period that she was terminated. The record indicates, though not clearly, that she returned to

[1] Respondents claim that Engleman, and also employee Marek, informed TEC that they were not available for employment in the Bryan-College Station area However, Davis, the TEC interviewer who testified, stated that he believed this to be so, but was not sure of the fact Since he was thus indefinite, and since both Engleman and Marek actually applied for work in the Bryan area, it is found that these employees were not opposed to working in that area

[2] The International Shoe ads in the local paper (in September 1966), upon which Respondents appear to rely to show that there were job opportunities for Engleman and others, were clearly seeking male help only

work for Respondents when given the opportunity.[3]

During the period that she was unemployed, Marek applied for employment at Albritton Engineering Company and at International Furniture, in Bryan, with Engleman. Although she submitted applications at each place, she did not receive an offer of employment. She also requested work of Clint Luksa in Caldwell, in August 1966. In November 1966, she sought work at the Sealy Mattress plant in a nearby community, but was told that they were not taking applications. Marek registered with TEC, but was not referred to any work. After 21 weeks, she testified, personnel at TEC advised her that if they had anything for her, they would contact her in Calwell. She also states that she inquired among the people she had contact with about job opportunities.

In their brief, Respondents contend that Marek should have sought work as a waitress since she had worked as a waitress for a year when she was 16, prior to her marriage, or answered the ads in September 1966 for production help at Albritton Engineering and at International Shoe in Bryan, or for sales personnel in Bryan, or for cooks and bakers at Texas A & M, at College Station, Texas.

When questioned about these matters, Marek stated that she had not seen the Albritton ad, or the ads concerning sales positions in Bryan, or the International Shoe ad. In addition, she testified that she had no experience in selling, and had been told by a foreman employed at International Shoe that they were not hiring. She further stated that her husband objected to her working as a waitress in the cafes, where beer was sold.

Respondents assert that backpay should be denied for the period subsequent to the 21-week period during which Marek was registered with TEC, on the ground that by ceasing to register with TEC, Marek was willfully incurring losses. Respondents contend in their brief that Marek should be awarded $688 in backpay.

Charles Carter: Carter's backpay period ran from June 23, 1966, to April 5, 1967. There is no indication that he returned to work for the Respondents. Carter had no interim earnings in the second quarter, 1966, in which a claim of $50 is asserted; Carter's interim earnings exceed his gross claim against Respondents in the third quarter of 1966; a claim is asserted for $460 in net backpay for the fourth quarter, 1966 (in which Carter's earnings were $220); and no claim is made for the first quarter, 1967, in which Carter's earnings again exceeded his gross claim against Respondents.

Carter testified that he did not look for work during the first week after he was terminated by Respondents. He then secured a job with International Shoe, and thereafter with a farmer, Mike Fozzino, giving Carter interim earnings in the third quarter of 1966 exceeding what he would have earned with the Respondents during this period. The job with Fozzino lasted until approximately October 31, 1966, at which time Carter was released. From that time to the end of the fourth quarter, 1966, Carter did not have employment. During this period, he applied for employment at an Alcoa plant in a nearby community, where he took a written test. When he returned to Alcoa 2 weeks later, he was told that he had passed the written test, but would have to have a physical exam. Carter asserts that he did not take the physical exam because the interviewer stated that the interviewer would first have to write to Carter's draft board to ascertain why he was classified 1-Y. Carter stated that Alcoa did not thereafter call him back. However, in the first part of 1967, Carter did return to Alcoa, at which time he was told he could take the physical exam. He nevertheless did not do so. It is unnecessary, however, to determine the significance of this action, or of the fact that he also quit employment at Albritton in the first quarter of 1967, because no claim for backpay is made for that quarter.

Respondents contend that Carter is entitled to no backpay. It is asserted that because Carter waited about a week before seeking work, rather than looking for a job immediately upon being terminated by Respondents, he is not entitled to the $50 claimed for the second quarter, 1966 (1 week at $1.25 per hour). It is further contended that Carter should not be awarded any pay for the fourth quarter, 1966, because, Respondents assert, after being rejected in his application at Alcoa, he made no other application for work. Respondents note that Carter at no time registered with TEC, and also that his wife was ill during this period. It is contended that this illness required Carter to remain at home and care for his wife. Respondents also call attention to an ad in the local paper during this period for a dairy hand (apparently to live on the premises), which was apparently known to Carter, although he did not see the ad. Carter was not questioned as to his reason for not seeking this. He did state, however, that if he had obtained the Alcoa job, he would have taken his wife to her mother to be cared for during this period.

Henry F. Charanza: Charanza's backpay period extends from June 23 to December 12, 1966. He had no interim earnings. It is agreed that Charanza's gross backpay claim is $1,047. Charanza registered with TEC, but was not referred to any work. In August or September he sought work with the telephone company in Bryan, where he was told that they were only hiring younger men. A month or so later, he heard that a plant manufacturing trailers near Bryan was "hiring," and he sought employment there. He was told that there was no work available. Not long after that he was reemployed by Respondents.

[3] Respondents' counsel referred to Marek as having been "recalled," and Marek replied in the present tense when asked about her work with Respondents In referring to the backpay period, the General Counsel referred to "this period when you were not working for Keller "

Respondents claim that Charanza did not exert due diligence in seeking work during this period, and point to a number of ads in the local paper which Charanza might have followed up: (1) The ad for a dairy hand, referred to above, which Charanza stated that he did not see. However, Charanza asserted that he did see an ad for a farm hand which was not otherwise identified in the papers received in evidence. (2) Ads for workers at International Shoe which appeared in September. Charanza stated that he did not see these ads (although he saw at least one Albritton ad appearing in one of these same papers), and said that he did not apply at International Shoe because he had previously made an application there, before he was employed at Respondents' plant, and had been told that they would call him if there was work for him. He stated that he had never been called. (3) Ads for help at Albritton Engineering. Charanza testified that he was aware of at least one of these, but stated that he did not apply there because he had previously been discharged at Albritton because of his union activities.[4] (4) An ad for labor and welding trainees at a plant in Houston, Texas (80 miles from Caldwell). (5) An ad for a service station attendant, which Charanza stated he had reason not to accept.

It was also established that Charanza owned a farm on which he kept cattle. It appears that he also had this farm during his previous employment with Respondents. He testified that he was able to take care of the farm by working there after working hours at the plant, and on weekends. Charanza stated that of his income from the farm about $700 to $800 could be assigned to the period when he was terminated by Respondents. Respondents contend that this income should be deducted from Charanza's backpay claim, and that he should be awarded only $300.

Jo Ann Gilliam: Gilliam's backpay period runs from September 30, 1966, to July 5, 1967. If she had worked for Respondents during this period, her gross pay would have totaled $2443. She had no interim earnings. When offered reinstatement, she returned to work for Respondents. During the backpay period, Gilliam testified that she registered at TEC every week, even when she was not receiving unemployment compensation. During the time she was registered with the TEC office at Bryan, she was not referred to any work. She states that she looked at help wanted ads in the Caldwell and Bryan papers, but did not see any ads for factory work, and that she also inquired among her friends about work, also unsuccessfully. In November 1966, she applied for work at the only other manufacturing plant in Caldwell, but was told that they were not hiring.

Some time in the early part of 1967, Gilliam's husband was temporarily assigned to work located at the town of Tahoka, Texas, about 25–30 miles from Lubbock, Texas. Gilliam continued her registration with TEC there, and was referred to one job. She testified that when she applied, she was told that all the vacancies had been filled. She also applied to a cotton ginning company there, and, she states, at the "city directory" in Lubbock, without success. She also inquired about work at a local cafe in Tahoka, but was told that there was none available. Gilliam returned from Tahoka in the early part of June 1967.[5]

Respondents contend that Gilliam did not show due diligence in seeking interim employment, and place considerable emphasis upon the fact that she made no effort to obtain work as a waitress during the backpay period. She had been employed as a waitress, before being hired by Respondents, at the Surrey Inn, which appears to be the best of the restaurants near Caldwell. The former manager of this restaurant, Ruby Lee Simmons, stated that she would have reemployed Gilliam during this period.[6] Gilliam testified that she had quit the restaurant to work with Respondents in the first instance because she was required to work on Saturday and Sunday in the restaurant, which, she stated, was the normal practice, and she wanted to be home with her husband and child on the weekend, as was possible while she was working for Respondents.

It is quite clear from Gilliam's testimony that she did not seek work at the restaurants in or near Caldwell because she did not want to go back to working Saturdays or Sundays, and because of the low pay,[7] but principally because she would have had to work on weekends. The testimony of Simmons confirms that Gilliam would have been required to work on weekends as a waitress at the restaurant. On the other hand, Gilliam sought in her testimony at other places to give the impression that she was willing to work at any place during the backpay period, and even contemplated working in an even less desirable restaurant in Caldwell during this time.

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[4] See *Albritton Engineering Corporation*, 138 NLRB 940

[5] Gilliam testified that she continued to visit the TEC office in Bryan after her return, seeking work, although her unemployment compensation ran out in May. An interviewer for TEC, Jimmy R Davis, testified that Gilliam did not "register for unemployment" when she returned from Tahoka. It is not considered that these statements present a conflict requiring resolution.

[6] Simmons stated that she had talked to Gilliam on the street about this on a number of occasions, but could definitely fix only one occasion, shortly before Gilliam was to leave to join her husband It is found that this occurred most likely in February 1967. It is stated that Gilliam laughed in response to her offer, or offers, of employment

[7] The testimony and estimates of Gilliam and Simmons as to what might be made by a waitress raises some problems Thus, Gilliam testified that she was paid 90 cents an hour for a 48-hour week, and averaged $4–5 in tips on weekdays and $5–7 on Sunday She stated that her monthly pay was about $150, though it is not clear whether this is a gross or net figure. On the other hand, Simmons stated that the hourly pay was 60 cents Respondents contend in their brief that the manager also stated that tips at the restaurant would average $10 a day, but a close study of the testimony shows that Simmons was estimating that waitresses would earn "an average of $10 a day, counting the salary "

In addition to ads in the Caldwell paper for waitresses (at restaurants other than the Surrey Inn, which did not advertise), Respondents' brief points to ads indicating job openings for sales persons (apparently door-to-door sales), for registered and vocational nurses at the local hospital, cooks and bakers at Texas A & M, for work at an employment service in Houston, and the Albritton and International Shoe ads, as indicating the availability of work. Gilliam was questioned about these and other ads, and about the opening of two large stores in Bryan during this time. Gilliam indicated either lack of experience or lack of knowledge of the work referred to except for the waitress jobs.

Respondents assert that, at the most, Gilliam might be given credit for 2 months' pay in recognition of her effort to obtain work at the factory in Caldwell, but that she should otherwise be denied backpay for failure to exercise due diligence in seeking work. Respondents challenge the credibility of her asserted efforts to obtain work in Tahoka, asserting that it is unlikely that she would have applied to a ginning company for clerical work when she was not a competent typist, and further state that it was unlikely that a ginning company would be open at that time of year in any event—a point on which the record sheds no light. Respondents suggest that $232, or, at another place, a maximum of $464 should be awarded to Gilliam.

Conclusions

The general legal considerations which control in this case have been well set forth by the Courts of Appeal for the Fifth and Fourth Circuits in recent opinions in *N.L.R.B.* v. *Miami Coca-Cola Bottling Co.*, 360 F.2d 569 (C.A. 5, 1966), and *Florence Printing Company* v. *N.L.R.B.*, 376 F.2d 216 (C.A. 4, 1967). In the *Miami* case the court stated, at 575:

> In order to be entitled to backpay, an employee must at least make "reasonable efforts to find new employment which is substantially equivalent to the position from which he was discharged and is suitable to a person of his background and experience."[Citations omitted.]
>
> The employee's duty is based both on the doctrine of mitigation of damages and on the policy of promoting production and employment. [Citations omitted.] Since proof of damages is the general counsel's burden, the courts traditionally have left with the employer the burden of proving facts that mitigate the extent of the damages. Failure, therefore, to make a reasonable search for interim work is an affirmative defense of backpay liability; the burden of proof is the employer's. [Citations omitted.]

In *Florence Printing*, the Fourth Circuit expanded on some of these matters as follows (pp. 220–221):

> As we pointed out in *Mooresville Cotton Mills* v. *N.L.R.B.*, 110 F.2d 179 (4 Cir. 1940), a wrongfully discharged employee cannot recover damages for losses which, in the exercise of due diligence, he could have avoided; but we recognized also that he may refuse to accept other employment which is dangerous, distasteful or essentially different from that for which he is employed. We added, ". . . nor is he necessarily obliged to accept employment at a distance from his home," and that ". . . is for the Board to determine whether, under the evidence, the location is a factor which may be reasonably taken into account." *Id.*, p. 181. Our conclusion was that in each case, whether an employee acted reasonably or not in accepting, rejecting, or seeking a particular employment, was a question of fact.

As both of these opinions emphasize, it is the duty of the employee to make reasonable efforts to secure work which is substantially equivalent to (or not essentially different from) that of which he has been wrongfully deprived, and which will afford work under relatively similar circumstances. The law does not thereby impose a burden upon the employee, because he was discriminated against, to make extraordinary, or onerous efforts to reduce the employer's potential liability for the employee's unemployment. On the other hand, the employee may not voluntarily withdraw from the labor market and insulate himself against employment, thus willfully incurring the losses for which he seeks recompense. *Phelps Dodge Corp.* v. *N.L.R.B.*, 313 U.S. 177. Each case, as the court in *Florence Printing* stated, must be determined as a question of fact on all of the evidence.

Judged by these standards, I believe that it must be held the five employees involved in this matter, under all the circumstances of this case, made reasonable efforts to secure employment as required by law, and did not willfully remove themselves from the labor market. In the case of the female employees involved, the record leaves the strong impression that even the most vigorous effort on their part to secure substantially equivalent employment, not essentially different from that which they had with Respondents, would have little or no chance of success in that area at that time. Indeed, Respondents' main thrust is to the effect that these employees should have tried for quite different and less desirable employment. In only two instances, with respect to ads by Albritton and International Shoe, do Respondents suggest that there were opportunities for similar work available for these employees. However, applications at Albritton by Engleman and Marek disprove the availability of work there. The evidence further shows that the ads at International Shoe were for men, and that Engleman, Marek, and Gilliam were reliably

informed that there were no openings at that plant for themselves.[8]

Gilliam presents an individual problem. In other circumstances, her efforts in the Caldwell area would appear insufficient. However, considering the smallness of the community with which we are concerned, the limited availability of equivalent work, and her communication with others in the community about available work, it seems unreasonable to require that she duplicate efforts that others had unsuccessfully made or to make apparently futile efforts at places 25 miles or more away from her home to find work similar to that which she had with Respondents. Her efforts to obtain work at Tahoka, as well as her acceptance of Respondents' offer of reemployment further indicate that she was, as she testified, willing to work, and had not removed herself from the labor market.

There can be no question of Carter's diligence in seeking work. Respondents, however, argue that he should be denied a week's pay in the second quarter of 1966, because he did not seek work immediately upon being terminated by Respondents, and further that he should be denied backpay for the fourth quarter of 1966, on the basis that he assertedly removed himself from the labor market in that quarter to take care of his sick wife.

As to the first of these contentions, there is no requirement that an employee wrongfully terminated must instantly seek new work; it is only required that the record as a whole show that he exercised due diligence to this end. See *Monroe Feed Store*, 122 NLRB 1479, 1483. It does not appear in this case that Carter willfully removed himself from the labor market, and there is no reason to deny him the week's compensation claimed for the second quarter of 1966.

Carter's activities in the fourth quarter of 1966 present a different problem. He had been released from his previous job without his fault. Thereafter, during this quarter, he did stay home with his wife, who was ill. If the record showed nothing more, there is no question but that he should be denied backpay during this quarter. However, the record shows that during this quarter, Carter made a substantial effort to get employment at Alcoa, took a written test there, and returned again 2 weeks later to follow up on this effort. At that time he was told to await further word from Alcoa, which was checking on his draft classification. Under the circumstances, it would appear reasonable that he might await word from Alcoa rather than venturing into a rather thin job market. Indeed, Respondents point to only one job opportunity which he might have sought, an ad in the local paper for "Dairy Hand. House provided. On school bus route." (Resp. Exh. 11.) Assuming that Carter was aware of this, the indication from the ad is that a worker was desired who would move in and live on the place. I do not believe that Carter was required to take such a position, under the circumstances presented in this matter, and he should not be disqualified on that ground.

Charanza made only two specific attempts to seek work during the backpay period, but it would appear that these were in good faith and were substantial efforts to secure employment. Both were in or near Bryan, which, as has been noted, is some little distance from Caldwell. The work opportunities which Respondents argue Charanza should have sought were either not equivalent to the work from which he had been terminated or otherwise were unknown or apparently unavailable to him. Thus, he had previously been discriminatorily discharged by Albritton and may well have rejected the idea of reapplying there, and he testified that he was unaware of the International Shoe ad. He had previously failed a physical examination at Alcoa. While his explanation for not applying for work at International Shoe—he had filed an application there before going to work for Respondents and had never heard from them—is less than satisfying, considering all of the factors involved, and particularly the relatively short time that he was unemployed, on the whole it would appear that he exercised reasonable diligence in seeking work during this period. There are indications, which have been noted, that his age and physical condition were limiting factors in his obtaining work for which he would not be penalized. The fact that he returned to work when offered reemployment by Respondents, is also some indication that he had not removed himself from the labor market.

Respondents, however, assert, on the basis of *N.L.R.B.* v. *Southern Silk Mills, Inc.*, 242 F.2d 697 (C.A. 6, 1957), that "after a reasonable period of time," these employees should be required to "lower their sights," and take whatever work was available in order to reduce Respondents' potential backpay liability. With respect to the men, as noted, Respondents contend that the men should have applied for the job of dairy hand previously referred to, and that Charanza should have sought work as a welding trainee in Houston or as a service station attendant. These contentions are without merit, for reasons which have been noted.

Much of Respondents' efforts in this matter were devoted to showing that if the three women, Engleman, Marek, and Gilliam, had wanted to work, they could have found something to do. This evidence has been carefully considered. However, assuming, without deciding, that these three, at some time during the backpay periods, should have looked for other than factory work, the record as a whole provides no basis for disqualifying them for

[8] Since TEC at Bryan was notably unsuccessful in referring any of the employees to work during this period, it is clear that, in the circumstances of this case, Marek's failure to register with TEC after 21 weeks in no way affected her losses during the backpay period, contrary to Respondents' contention

not seeking the work opportunities which Respondents urge were available for them, in the opinion of the Trial Examiner.

In only two instances was it shown that such other work was actually available for the females involved (as distinguished from newspaper ads, which, at the most, create only a presumption), and these involve Engleman's failure to seek work as a nurses' aide, and Gilliam's failure to seek work as a waitress. Engleman's explanation of her reason for not returning to work at the hospital was simple, sincere, and convincing. Her other efforts to get employment support her availability for work during her backpay period.

It cannot be said that Gilliam was as candid. Notwithstanding an apparent effort to leave the impression that she was willing to work as a waitress in the Caldwell area during this period, it is clear that she was not willing to accept such employment. However, her reasons for not going back to work as a waitress, which are credited, appear to be quite reasonable: her desire to be with her husband and child on weekends, and the lower pay involved in being a waitress. As previously noted, her former supervisor, Simmons, confirmed the fact that as a waitress Gilliam would have to work weekends. Having originally taken a job with Respondents in order to be freed of the disadvantage of having to work on Saturdays and Sundays, it would not be proper to hold that Gilliam was required to return to such personally unacceptable employment because she had been discriminatorily terminated.

In addition, as noted above, Respondents argue that any award to Engleman or Charanza should be reduced by their income from farm work. Engleman, however, was not shown to have been substantially or gainfully employed in farm work and the record is clear that Charanza was well able to, and normally did, care for his farm during hours when he was not working for Respondents. In these circumstances, no basis appears for diminishing the backpay claims of these employees. *Acme Mattress Company, Inc.*, 97 NLRB 1439.

RECOMMENDED ORDER

Upon the basis of the foregoing findings and conclusions, it is ordered that the Respondents, Keller Aluminum Chairs Southern, Inc., and Keller Aluminum Ladders Southern, Inc., subsidiaries of Keller Industries, Inc., their officers, agents, successors, and assigns, shall pay to the employees involved in this proceeding, as net backpay and benefits, the amounts set forth opposite their names:[9]

Laura Engleman	$2,023
Dellaphene Marek	$1,808
Charles Carter	$ 510
Henry Charanza	$1,047
Jo Ann Gilliam	$2,443

[9] Interest is to be added at the rate of 6 percent per annum on the respective amounts set forth, computed quarterly, in the manner prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716. The net backpay awards are to be reduced by such tax withholdings as are required by Federal and state laws.